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# Appeal Decision

Inquiry held between 27-29 November 2012

Site visit made on 25 November 2012

**by Neil Pope BA (HONS) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 December 2012**

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**Appeal Ref: APP/U1105/A/12/2180060**

**Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon, EX11 1EP.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Redrow Homes South West against the decision of East Devon District Council.
  - The application Ref. 12/0277/MOUT, dated 31 January 2012, was refused by notice dated 27 April 2012.
  - The development proposed is up to 130 open-market and affordable houses, public open space, with associated infrastructure and the retention of the existing allotments.
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## Decision

1. The appeal is allowed and outline planning permission is granted for up to 130 open-market and affordable houses, public open space, with associated infrastructure and the retention of the existing allotments at Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon, EX11 1EP. The permission is granted in accordance with the terms of the application, Ref. 12/0277/MOUT, dated 31 January 2012, subject to the conditions in the attached Schedule.

## Procedural Matters

2. With the exception of the means of access, all other matters of detail have been reserved for subsequent consideration. I have treated the layout plans as being illustrative only.
3. The Council's decision notice includes reference to policy EN14 of the East Devon Local Plan 1995-2011 (LP). The Council informed me that this policy is "*time expired*" and no longer formed part of its case.
4. At the Inquiry I was given a copy of a plan detailing the proposed site access arrangements (Figure 4.2). The Council confirmed that it had determined the application on the basis of the details shown on this plan. I have taken this plan into account in determining the appeal.
5. I have also taken into account the contents of the Statement of Common Ground (SCG) that has been agreed by the Council and the appellant, as well as the separate SCG agreed by the appellant and Devon County Council in respect of highway and transportation issues.
6. The appellant has submitted a planning obligation (unilateral undertaking) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). This includes provision for: 40% affordable housing as part of

the scheme; public open space within the site; a Travel Plan and; financial contributions towards the cost of additional secondary school facilities at The Kings School Ottery St. Mary (£355,699) and the improvement of existing recreational playing pitches (£230,404.65). I return to this matter below.

7. In addition to the above mentioned site visit, I experienced traffic conditions through the town during the peak weekday morning and evening periods.

### **Main Issues**

8. There are two main issues: firstly, whether there is a shortfall in the five year supply of housing land within the district and the implications for the adopted and emerging spatial vision for East Devon and; secondly, whether the proposal would result in a significant and unacceptable loss of best and most versatile agricultural land.

### **Reasons**

#### *First Main Issue - Housing Supply/Spatial Vision*

9. One of the objectives of the development plan<sup>1</sup> is to meet the housing needs of the community. In essence, the adopted and emerging<sup>2</sup> spatial strategy for this part of Devon aims to deliver new housing in the most sustainable way<sup>3</sup> by concentrating growth at the Principal Urban Area of Exeter (PUA) and other designated centres of growth<sup>4</sup>, including Area Centres<sup>5</sup> like Ottery St. Mary.
10. The housing figures in the development plan are based upon evidence, including household and population projections, that was produced towards the end of the last century. The settlement boundaries within the LP<sup>6</sup>, which is a 'time expired' Plan, were drawn up with these now dated projections in mind. There is some merit therefore in the appellant's argument that the more recent household projections<sup>7</sup>, which formed part of the evidence base to the draft Regional Spatial Strategy (RSS) for the South West, provide a more reliable basis on which to assess housing land supply.
11. It is the Government's firm intention, through the Localism Act 2011, to abolish Regional Spatial Strategies. The draft RSS for the South West therefore has little weight in determining this appeal. However, that is not to say that the evidence base should be ignored. Unlike one of the reports<sup>8</sup> that underpins the emerging LP and which, amongst other things, is cautious about the use of the 2008 DCLG projections, the evidence base to the draft RSS has been independently examined and is arguably more robust.
12. The Council's stance in taking a disaggregated approach to the assessment of housing land supply is also not unimportant. However, given the relevant statutory provisions<sup>9</sup>, the SP end date of 2016 and the findings of some other Inspectors in respect of other housing schemes elsewhere in East Devon (Refs.

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<sup>1</sup> Includes Regional Planning Guidance for the South West (RPG10) and the 'saved' policies of the Devon Structure Plan 2001 to 2016 (SP) and the LP.

<sup>2</sup> The New East Devon Local Plan 2006-2026 Proposed Submission (Publication) [emerging LP]

<sup>3</sup> As provided for by SP policy ST1

<sup>4</sup> As provided for by SP policy ST5

<sup>5</sup> As provided for by SP policy ST15

<sup>6</sup> As provided for by LP policy S2

<sup>7</sup> Provided by the Department of Communities and Local Government (DCLG) in 2008

<sup>8</sup> East Devon Housing and Employment Study Final Report - Roger Tym & Partners December 2011

<sup>9</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

APP/U1105/A/11/2155312, 2156973 and 12/2172708), the start point for assessing housing land supply is the district-wide five year supply. These appeals all post-date the appeal in Hampshire which the Council relies upon to support its stance (Ref. APP/X3025/A/10/2140962).

13. Both main parties agree that in East Devon District there has been an under-supply of housing in 8 out of the last 10 years. As a consequence of this persistent under-delivery of housing within the district it was also agreed that a 20% buffer should be applied to the five year supply as set out in paragraph 47 of The National Planning Policy Framework ('the Framework').
14. One of the objectives of 'the Framework' is to boost significantly the supply of housing. A recent Ministerial Statement<sup>10</sup>, amongst other things, also states that the need for new homes is acute, and supply remains constrained. These are important material considerations that must also be taken into account.
15. The Council has calculated<sup>11</sup>, under the SP requirements, that there is about a 5.7 years supply of housing land within the District. (About 27.5 years supply in the 'Rest of East Devon' and about 3 years supply in the 'West End' [Cranbrook or at the PUA].) In contrast, the appellant has calculated that there is only about a 3.6 years district-wide supply.
16. Footnote 11 to 'the Framework' states that to be deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that the development is viable.
17. The Council's assessment includes the following elements: sites with planning permission and/or under construction; other large sites with clear acknowledged development potential; future projected windfall allowance; proposed strategic allocations in the emerging LP and proposed non-strategic small site allocations. I consider each of these in turn below.

#### Sites with planning permission and/or under construction

18. This category includes over 400 sites (mostly schemes of less than 10 dwellings) with a total of 1,571 dwellings. The appellant has argued that a 10% discount should be applied to the total number of dwellings to allow for the non-implementation of some schemes. I understand the appellant's logic in applying this conservative discount and note that some permissions for small-scale housing are obtained for valuation purposes only. It would be very surprising if all 1,571 units were built during the five year period.
19. However, Footnote 11 to 'the Framework' also states that sites with permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years. Given the very large number of sites, it is unsurprising that the appellant has not analysed these permissions to assess, amongst other things, viability. The Council informed me that it had taken a "literal" approach to applying this Footnote. Notwithstanding my doubts above as to the likelihood of all 1,571 dwellings being provided, in the absence of any interrogation of the data it could be unsound to apply a discount to this figure.

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<sup>10</sup> 'Housing and Growth' Statement by the Secretary of State for Communities and Local Government 6/9/12

<sup>11</sup> By adding the 20% buffer to the housing requirement figure

20. The Council's assessment on this matter also includes 2,621 dwellings on sites at the West End. The bulk of these permissions are held by a consortium of national house builders at Cranbrook. Considerable infrastructure has been provided to allow for the development of this 'new community' and housing is now being delivered. However, house builders operate in a very competitive market where it could be in their interests to exaggerate sales estimates in order to thwart a rival. I am therefore cautious about the estimated delivery/sales provided on behalf of the consortium and which have been used to support the Council's assessment.
21. It is also not lost on me that it would be in the appellant's interest to 'downplay' the consortium's figures to gain an advantage in the market. However, the appellant's calculations are based upon the average annual completion rates from sales outlets operated by these national house builders and contained within their 2011 Annual Reports. Furthermore, there would be considerable competition between the various sales outlets at Cranbrook (between 4-6 different sales outlets). I also note the appellant's argument that economic recovery is still some way off. The appellant has provided a realistic assessment of the housing that can reasonably be expected to be delivered.
22. The completion rates at Cranbrook are therefore likely to be much nearer the figures supplied by the appellant rather than the Council and the consortium. The number of dwellings delivered over the five year period from Cranbrook would be very much less than predicted by the Council. I note that there is little between the main parties over the other housing that is expected to be delivered at other West End sites.

#### Other large sites with clear acknowledged development potential

23. The Council has calculated that 333 dwellings would be provided from this source. However, only one of these sites has planning permission for housing and the Council informed me that a new permission would be required before any dwellings could be delivered on that site. Whilst planning applications have been submitted in respect of the other sites, none have permission and some have been awaiting the completion of planning obligations for many months. This could be due to various issues, including viability. The Council's expectation that some of these schemes would have "*early delivery*" appears overly-optimistic. I concur with the appellant that in the context of Footnote 11 to 'the Framework' most, if not all, of these sites are not deliverable and should not be included within the housing supply assessment.

#### Future projected windfall allowance

24. There is no dispute between the main parties that an allowance for windfall sites should be made. Paragraph 48 of 'the Framework' advises that any allowance should be realistic having regard, amongst other things, to historic windfall delivery rates.
25. The Council has predicted that 475 dwellings would be delivered from this source over the five year period. In support of this figure it has drawn my attention to a Technical Working Paper<sup>12</sup> that it published in April 2012.
26. Amongst other things, the Working Paper provides an annual average estimate of 130 dwellings from windfall sites. It states that for the next two years

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<sup>12</sup> Housing Land Supply To Support The New East Devon Local Plan and Five Year Land Supply Assessment

windfall completions will be largely drawn from the existing commitment stock that already has permission and therefore are already accounted for in the housing projections.

27. However, in updating its housing supply figures to the end of September 2012, the Council appears to have ignored the two year 'lead in' period which it identified in its Working Paper in April. I note that these 'updated' figures were arrived at following the appeal decision dated 25 September 2012, at Feniton (Ref. APP/U1105/A/12/2172708) and where the Inspector found that the Council had failed to demonstrate a five year supply of deliverable sites.
28. The appellant's figure of 280 dwellings from this source is consistent with the assessment in the Council's Working Paper and is more soundly based than the higher figure now put forward by the Council.

#### Proposed strategic allocations in the emerging LP

29. The Council has estimated that 500 dwellings would be provided from this source and has drawn my attention to planning applications that have been submitted in respect of some of these proposed allocations, including the recent schemes for the Island Farm site at Ottery St. Mary.
30. However, these sites do not have planning permission and are not available now. There may also be technical and/or viability issues which could delay them coming forward within the five year period. Moreover, the timing of the submission of some of these applications appears to be more than coincidental, given the date of the Inquiry into this appeal. As I have already noted above, the house building industry is very competitive.
31. I recognise that much work has gone into the preparation of the emerging LP and that there is local support for the Island Farm allocation. However, the extent of this support and opposition to the allocations within the emerging LP will not be apparent until after the current 'consultation stage' has been completed. The principle of undertaking development on these sites has yet to be independently examined. Whilst that is a separate matter for another Inspector, it is by no means certain that the Plan would be adopted in its current form or that the emerging strategy will be found sound.
32. The Council informed me that the emerging LP is not likely to be adopted until 2014 and accepts that at this stage it can only be given limited weight. Moreover, many, if not all, of these allocated sites are subject to the same or similar housing/settlement policies as the appeal site. If the Council was to release these allocated sites now it would be tantamount to accepting that it did not have a five year supply of deliverable housing land.
33. There is greater force in the appellant's argument that these allocated sites should not be included, at this stage, as part of the five year supply.

#### Proposed non-strategic small site allocations

34. The Council has calculated that these sites would deliver 456 dwellings over the five year period. However, in many instances this is made up of a list of settlements in which an allocation is proposed but where no site has been identified and no permission has been sought or obtained. One that is identified is the Cutler Hammer site in Ottery St. Mary. I understand that applications have very recently been lodged with the Council to redevelop this

site. However, there are recognised constraints to developing this site and several previous applications have been refused. The extent of any remaining objections is, at present, unknown. Even if allowance is made for the few sites which have permission, the numbers of dwellings that would be deliverable from this source would be very much lower than predicted by the Council.

#### Preliminary conclusion on housing supply

35. When my findings above are applied to an assessment using the SP housing requirements on a district-wide basis there is less than a five year supply of deliverable sites for housing. When applied against the housing requirements of the former Secretary of State's Proposed Changes to the draft RSS or the 2008 CLG projections, the shortfall is even greater.
36. Under the Council's disaggregated approach, the appeal site would fall within the 'Rest of East Devon'. As I have noted above, within this part of the district the supply of deliverable sites is very much greater than five years. I understand this approach is aimed at reflecting the spatial strategy which directs growth to different parts of the district. However, no development plan or national policies advocate such an approach.
37. The Council informed me that, if permitted, it would be "*very difficult*" to say that the appeal scheme would slow down the delivery of housing at Cranbrook. Therefore, even if a disaggregated approach was adopted, there is no cogent evidence to show any harm. The Council also informed me that if a five year supply of deliverable sites did not exist under the SP housing requirements then no such supply would exist under the provisions of the emerging LP.
38. Ottery St. Mary includes a wide range of services and facilities, including a hospital, schools, public transport and employment/business premises. Whilst additional employment provision would enhance the 'self-sufficiency' of the town, the Highway Authority, who in my experience regularly comment in respect of the need to travel, are content with the sustainability credentials of the scheme. There is no cogent evidence to demonstrate that the appeal scheme would have any harmful implications for the spatial strategy or prejudice housing growth at the larger Area Centres of Exmouth or Honiton.
39. Whilst the proposal would result in some commuting to Exeter and more limited commuting elsewhere, it would not significantly increase the need to travel. Unlike developments permitted within the town in the recent past, the appeal scheme would include a sizeable number of affordable dwellings. These would assist in meeting the housing needs of the local community and contribute to the town's 'self-sufficiency'. Up until March 2012, the Council was also suggesting more housing for the town, over and above the proposed allocations that I have noted above. This indicates that its officers, at least, considered that additional housing would not be unsustainable at that time.
40. Paragraph 49 of 'the Framework' states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Given my findings above on this matter, the location of the appeal site outside the LP built-up-area boundary for the town is not a sound basis for withholding permission. I note that a similar approach was taken in two linked appeals in Gloucestershire in July 2012 (Refs.

APP/G1630/A/11/2146206 and 2148635). Whilst I also note the findings in respect of single dwelling schemes elsewhere in East Devon (Refs. APP/U1105/A/12/2171709 & 2177354) housing land supply was not a main issue in either of these cases.

41. 'The Framework' is also clear in seeking to allow people and communities back into planning by empowering them to shape their surroundings with succinct local and neighbourhood plans. In this regard, I note that the Town Council and many residents have attended public meetings in connection with the emerging LP and want to help shape the future growth at Ottery St. Mary.
42. However, the evidence base for the emerging LP has yet to be independently examined and, as I have noted above, the outcome of this process, including arguments concerning the scale of housing, will not be decided for some time. The Council's reasons for refusal do not refer to the emerging LP and it has not raised a 'prematurity argument'. Approving the appeal scheme would not prejudice the outcome of the examination into the emerging LP. Moreover, delaying much needed housing would be at odds with the aim of significantly boosting the supply of housing.
43. Urgent action is required to address the shortfall in housing within the district and assist in meeting the needs of those who require affordable housing. The evidence before me indicates that there is a considerable local need for this type of housing within the town. The Council was unable to inform me what provision for affordable housing has been advanced in the recent applications for Island Farm. The outcome of these proposals is unknown and it could be many months before that site is released for housing. The appeal scheme has the potential to provide necessary housing at a much earlier date. The appellant's agent informed me that he had no doubts that the proposed scale of affordable housing could be provided as part of the appeal scheme.
44. I conclude on the first main issue that there is a shortfall in the five year supply of housing land within the district and the proposal would not have any harmful implications for the adopted and emerging spatial vision for East Devon.

#### *Second Main Issue - Agricultural Land*

45. The proposal would entail the permanent loss of about 4.1 ha of the best and most versatile quality farmland (BMV), the bulk of which would be Grade 2 agricultural land. Under SP policy CO14 non agricultural development is only permitted on BMV where there is an over-riding need for the development in that location which outweighs the need to protect such land. However, this policy was based upon national planning guidance which is no longer extant.
46. Paragraph 112 of 'the Framework' states that local planning authorities should take into account the economic and other benefits of BMV. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of higher quality.
47. The appeal site forms part of an 82 ha holding which comprises a mixed arable and grassland enterprise. It is a distinctly separate land unit to the main farming interests which are located some distance to the north. There are playing fields to the north of the site and allotments and a cemetery to the south. The proposal would represent a very small loss of the area farmed in this enterprise. It would not fragment or sever the remainder of the holding

and no significant adjustments to the farm business would be required. There is no cogent evidence to refute the assessment made by the appellant's agricultural consultant that the site has no specific economic or other benefits to justify withholding permission.

48. "*Significant development*" is not defined in the context of paragraph 112 of 'the Framework'. However, my attention has been drawn to various appeal schemes elsewhere where the loss of similar-sized or larger areas of BMV have not been held to be 'significant'. Whilst each case must be assessed on its own merits, I also note that much of the land around Ottery St. Mary comprises BMV, including part of the Island Farm site. I concur with the appellant's consultant that the proposal would not entail significant development of BMV. There is also no meaningful evidence to support the concerns of some interested parties that the proposal would harm the security of food supply.
49. Even if my reasoning on this issue is defective, the housing shortfall that I have identified in the first main issue would amount to an over-riding need for development on the appeal site. There is no conflict with SP policy CO14. Whilst the loss of this limited area of BMV is unfortunate, the provision of about 50 dwellings to help meet local housing needs is an important consideration.
50. I conclude on the second main issue that the proposal would not result in a significant and unacceptable loss of best and most versatile agricultural land.

#### *Other Matters*

51. My findings above in respect of the first main issue outweigh the conflict that the Council has identified in respect of the development plan policies that are aimed at protecting the countryside. I agree with both main parties that the scheme would result in limited visual and landscape impacts. New planting and landscaping would be provided as part of the reserved matters to soften the impact of the development. The proposed dwellings could also be designed to reflect local distinctiveness. There would be no harm to the setting of the East Devon Area of Outstanding Natural Beauty.
52. I note the concerns of some residents regarding surface water drainage and I undertook an unaccompanied pre-inquiry site visit shortly after a period of prolonged and heavy rainfall. The appellant's Flood Risk Assessment concludes that the flood risk is low and that the development could be undertaken in a sustainable manner without increasing the flood risk to future occupiers of the proposed dwellings or third parties within the catchment. Appropriate mitigation would be required as part of the detailed design and could be dealt with by way of a suitably worded planning condition.
53. Many residents are also concerned over the highway implications of the scheme, including the additional traffic that would pass between the site and the town centre. As I saw during my visits, footways are lacking in places and the medieval street pattern in the town centre creates several pinch-points. These pinch-points and the parked vehicles along some sections of the carriageways can restrict the free-flow of traffic.
54. I recognise that residents are very familiar with the local highway network. However, the detailed technical evidence submitted in support of the scheme shows that there is adequate highway capacity to accommodate the proposal. I also recognise that there is more convenient access to the town centre, hospital, secondary school and some employment premises from the western

- side of the town. Whilst some residents of the proposed development would choose to travel by car, many others are unlikely to find travelling by bus<sup>13</sup>, foot or cycle so challenging that it would deter them from accessing these facilities by more sustainable modes of transport. The planning obligation also includes measures to encourage incoming residents to travel by bus or bicycle. It would be unreasonable to withhold permission on highway grounds. I note that no such objection was made by the Highway Authority or the Council.
55. Some slow worms and hazel dormice live in some of the hedgerows within the site. These hedgerows are also used by several species of bats for foraging and commuting, as well as providing a habitat for some nesting birds. The proposal would therefore have the potential to have an impact upon these species. However, as noted within the appellant's Ecological Impact Assessment, measures to mitigate the effects of the scheme would be likely to avoid any long-term and adverse impact on protected species. Such measures could include retaining the majority of hedgerows and enhancing these by 'gapping up', as well as the creation of an area of new wildflower grassland within the site. The management of these habitats could be secured by a planning condition that required the submission and approval of a Landscape and Ecological Management Plan for the site.
56. Natural England agrees with the appellant's Assessment that the scheme could result in an overall 'biodiversity gain'. I have also been informed that, if necessary, any slow worms that were disturbed during the development could be captured and moved to a suitable habitat elsewhere within the site. The proposal would be unlikely to harm important nature conservation interests.
57. There is much local opposition to the appeal scheme and I have noted above a Government objective of empowering local people to shape their surroundings. Whilst I do not set these concerns aside lightly, local opposition is not in itself sufficient to withhold permission. Moreover, the Government has also made it clear that housing market requirements are important, as well as the need to facilitate housing and respond positively to wider opportunities for growth.
58. In addition to the affordable housing provision, the appellant has also argued that there are other benefits of the scheme. These include support for local shops and services (including public transport) through the additional spending power of incoming residents, payments to the Council via the Government's New Homes Bonus Scheme and jobs/employment within the construction sector.
59. As the intended use of any Bonus has not been established it is not possible to conclude that there would be a direct connection with the appeal scheme. Nevertheless, as set out in the Ministerial Statement of 23 March 2011<sup>14</sup>, the Secretary of State attaches significant weight to the need to secure economic growth and employment.
60. I understand that many years ago another appeal for housing on the site was dismissed. I also note that the Inspector who conducted the last LP Inquiry found that it would not be appropriate, at that time, to allocate the site for housing. However, I have not been provided with a copy of this previous appeal decision and there have been material changes in circumstances since that decision and the LP Inquiry.

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<sup>13</sup> The town circular bus service travels along Butts Hill and Higher Ridgeway in close proximity to the site

<sup>14</sup> 'Planning for Growth' The Minister of State for Decentralisation

61. Both main parties have drawn my attention to appeal decisions on other sites in East Devon and elsewhere within the country. No two sites/cases are the same and each case must be determined on its own merits. In this regard, two of the cases referred to by the Council involved 'green wedge' issues which do not arise in the appeal before me (Refs. APP/U1105/A/11/2161479 and APP/G2435/A/11/2158154). These other decisions do not set a precedent that I must follow.

#### *Planning Obligation*

62. The development plan requires residential schemes to include an element of affordable housing and 'the Framework', amongst other things, aims to provide inclusive and mixed communities. Given the need for affordable housing within the district, the provisions of the planning obligation which deals with this matter is compliant with paragraph 204 of 'the Framework' and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

63. The number of pupils on the school roll at The Kings School Ottery St. Mary exceeds the pupil place capacity. Contributions would therefore be necessary to ensure adequate educational infrastructure was in place to accommodate the likely increase in numbers of pupils that would arise from the development. The contribution is fairly and reasonably related in scale and kind to the development. This provision of the obligation is also compliant with paragraph 204 of 'the Framework' and Regulation 122 of the CIL Regulations 2010.

64. To ensure that incoming residents were encouraged to travel by more sustainable modes of transport and limit the potential for any increase in congestion in the town centre, it would be necessary to include provision for this as part of the planning obligation. The proposed Travel Plan, Travel Pack and Welcome Pack accord with the provisions of paragraph 204 of 'the Framework' and Regulation 122 of the CIL Regulations 2010.

65. Residents of the proposed dwellings would generate a need for public open space provision within the site and would increase the demand upon existing recreational facilities within the area. The provisions within the obligation for providing a locally equipped area of play within the site and the creation of a management company to maintain open spaces within the site accords with the provisions of paragraph 204 of 'the Framework' and Regulation 122 of the CIL Regulations 2010. However, the evidence before me does not demonstrate that the scale of contribution for improving existing recreational playing pitches in the vicinity of the site is necessary to make the development acceptable, or that it is fairly and reasonably related in scale and kind to the proposal. I am unable therefore to take this element of the obligation into account.

#### *Planning Conditions*

66. I have considered the suggested conditions, which were agreed by both main parties, having regard to the advice in Circular 11/95<sup>15</sup>. Where necessary, I have modified these to take into account the advice in the Circular.

67. In addition to the 'standard' conditions requiring the submission of the reserved matters and the commencement of development, it would be necessary, in the interests of proper planning, to specify the approved plans. For this outline scheme the relevant drawings are the 'red line' site plan and the access details.

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<sup>15</sup> The Use of Conditions in Planning Permissions

68. Improvements would be required to the local sewage treatment works before the development could proceed. It would therefore be necessary to attach a 'Grampian style' condition which required such improvements to be undertaken before any of the proposed dwellings were occupied. As I have already noted above, a condition would also be necessary to avoid land drainage problems.
69. A phasing condition would be necessary to enable parts of the development to proceed without requiring all of the highways infrastructure to be provided from the outset. Separate conditions would be necessary to ensure this infrastructure (estate roads etc.,) was provided at the appropriate time.
70. To safeguard the character and appearance of the area it would be necessary to attach conditions limiting the height of the proposed buildings and requiring the submission and approval of an Arboricultural Method Statement and a Tree Protection Plan. A condition would also be necessary to safeguard archaeological interests. As I have noted above, a condition would also be necessary to safeguard nature conservation interests.
71. To safeguard the living conditions of neighbouring residents during the construction phase a condition requiring the submission/approval of a Construction Method Statement would be necessary.
72. Both main parties agree that a condition requiring the submission of a Travel Plan would duplicate the provisions of the planning obligation and would be unnecessary. As separate legislation exists to prevent obstructions along the highway a condition requiring this to be maintained for the free-flow of traffic would also be unnecessary. Matters relating to boundary treatments and the materials of construction could be addressed at reserved matters stage and conditions requiring such details to be provided now would be unnecessary.

#### *Overall Conclusion*

73. When all of the above matters are weighed, there is a compelling case for releasing this site for housing and there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme. Whilst my findings will disappoint many residents, the evidence leads me to conclude that permission should not be withheld. The appeal should therefore succeed.

*Neil Pope*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Ground of Counsel                      Instructed by the Solicitor to the Council

He called

Mr M Dickins MRTPI                              Planning Policy Manager

Mrs L Shwenn BA (Hons), BTP,      Senior Planning Officer  
MRTPI

### FOR THE APPELLANT:

Mr I Dove QC                                      Instructed by Mr G Williams, Nathaniel Lichfield &  
Partners

He called

Mr C D Miles BSc (Hons),                      Director, FMW Consultancy Ltd  
AMICE, MCIHT, CMILT

Mr A H Elliott BA, MSc, FBIAC,              Associate, Reading Agricultural Consultants Ltd  
AIEMA

Mr G Williams BSc (Hons),                  Director, Nathaniel Lichfield & Partners  
DipTP, MRTPI

### INTERESTED PERSONS:

Cllr P Lewis	Ottery St. Mary Town Council
Dr M Hall	Secretary, East Devon Branch of the Campaign to Protect Rural England
Mr Koch	Local resident
Mrs H Dickason	Protect Ottery St. Mary
Mr M Macdonald	Local resident
Cllr R Giles	Member of Devon County Council, East Devon District Council and Ottery St. Mary Town Council
Mr M Thurgood	Local Resident

### LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY:

Document 1	The appellant's opening submissions
Document 2	List of planning conditions agreed by the Council and the appellant
Document 3	Clarification Note from Mr Dickins
Document 4	Table showing net past housing completion figures
Document 5	Report for the Council's Local Plan Panel of 20 March 2012
Document 6	Site access arrangements (Figure 4.2)
Document 7	Completed planning obligation
Document 8	Letter from Drs Robert and Juliet Baker
Document 9	Various extracts from Roger Tym & Partners Final Report –

Document 10	East Devon Housing and Employment Study (December 2011) Various extracts from The New East Devon Local Plan 2006-26 Proposed Submission (Publication)
Document 11	Letter dated 24 October 2008 from the Chairman of the South West Regional Assembly to the former Secretary of State
Document 12	Report by 4R Group, land at Barrack Road, Ottery St. Mary
Document 13	Note dated 28 November 2012 from 4R Group
Document 14	Letter dated 28 November 2012 from EAD ecological consultants
Document 15	The Council's closing submissions
Document 16	The appellant's closing submissions

## SCHEDULE OF PLANNING CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2500 scale site location plan and 1:500 scale site access arrangements plan (Figure 4.2).
5. No dwelling hereby approved shall be occupied and there shall be no discharge to the public foul sewerage network until such time as improvements to the Sewage Treatment facilities serving Ottery St. Mary (as necessary to increase capacity to accommodate the development) have been completed. The developer shall notify the Local Planning Authority in writing within 28 days of the completion of these improvements.
6. No development shall commence until a programme for the phasing of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved programme.
7. No building on the site shall exceed 10 metres in height above the proposed ground levels.
8. The proposed estate road, emergency access, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, visibility splays, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before construction begins. These details shall include plans and sections indicating, as appropriate, the design, layout, levels, gradients,

materials and method of construction.

9. Unless otherwise agreed in writing with the Local Planning Authority, no other part of the development hereby approved shall be commenced until:
  - a) the main access road has been laid out, kerbed, drained and constructed up to base course level for the first 20 metres back from its junction with the public highway;
  - b) the ironwork has been set to base course level and the visibility splays required by this permission laid out;
  - c) the alterations to the public highway frontage required by this permission have been constructed up to base course level and;
  - d) a site compound and car park have been provided within the site.
  
10. Unless otherwise agreed in writing with the Local Planning Authority, no dwelling in an agreed phase of the development shall be occupied until the following works have been carried out:
  - a) the spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - b) the spine road and cul-de-sac footways/footpaths which provide that dwelling with pedestrian access to a highway maintainable at public expense has been constructed up to and including base course level;
  - c) the cul-de-sac visibility splays have been laid out to their final level;
  - d) the street lighting has been erected and is operational;
  - e) the car parking and any other vehicular access facility required for a dwelling by this permission has been completed;
  - f) the verge and service margin and vehicle crossing on the road frontage of the dwelling has been completed with the highway boundary defined;
  - g) the street nameplates have been erected.
  
11. Unless otherwise agreed in writing with the Local Planning Authority (LPA), no development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the developer and approved in writing by the LPA. The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the LPA.
  
12. No development shall take place until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide for:
  - a) the parking of vehicles for site operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials;
  - d) the erection and maintenance of security hoarding including any decorative displays and facilities for public viewing;
  - e) wheel washing facilities;
  - f) measures to control the emission of dust and dirt during construction;
  - g) a scheme for recycling/disposing of waste resulting from construction works; and
  - h) details of hours in which construction work will take place.The development shall be undertaken in accordance with the approved CMS.

13. No dwelling shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. These shall be based upon the conclusions and mitigation/recommendations set out in section 5 of the Flood Risk Assessment prepared by WSP and dated December 2011. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- a) provide information about the design storm period and intensity, the method to be employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - b) include a timetable for its implementation, as well as a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.
14. No development shall commence until an Arboricultural Method Statement and a Tree Protection Plan (which shall include measures to protect hedgerows within the site) has been submitted to and approved in writing by the Local Planning Authority. This Statement and Plan shall include the retention of those trees identified as 'Category A' and 'Category B' trees within the ACD arboricultural report dated 8 December 2011. The development shall be undertaken in accordance with the approved Statement and Plan.
15. No development shall commence until an ecological mitigation strategy, which is based upon the measures set out in section 4 of the Ecological Impact Assessment undertaken by EAD Ecological Consultants, dated January 2012, including the production of a Landscape and Ecological Management Plan detailing the long-term management of retained and created habitats within the site, has been submitted to and approved in writing by the Local Planning Authority. The approved strategy shall include provision within the site for: not less than 880m<sup>2</sup> of new wildflower grassland; 'gapping up' retained hedgerows and; bird and bat boxes. The development shall be carried out in accordance with the agreed strategy and Plan.